



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bell Technical Operations Corporation

File: B-225819, B-225819.2

Date: May 21, 1987

DIGEST

1. Under the Competition in Contracting Act of 1984, agencies are not required to provide to protesters and other interested parties documents related to a protest that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, decisions on bid protests are based on the entire record and not merely on those portions that have been released to the protester and other interested parties.

2. New grounds of protest raised for the first time in a letter filed in the General Accounting Office subsequent to initial protest letter must independently satisfy the timeliness rules of Bid Protest Regulations. Where protester should have known areas in which its proposal was downgraded from agency correspondence and debriefing, at which the scoring of protester's proposal in those areas was discussed, but waited 20 days after debriefing to protest the low scoring of its proposal in those areas, protest is dismissed as untimely.

3. Contracting agency's selection of higher priced, higher technically rated offeror was proper, since request for proposals provided that technical factors would be weighted at 90 percent of total evaluation while evaluated price would represent only 10 percent and there is no evidence that price/technical tradeoff was unreasonable.

4. Protester's self-serving speculation that awardee may have submitted its initial proposal after closing time set for receipt of initial proposals does not show submission was late where no evidence has been submitted in support of allegation and agency denies that it is true.

5. Allegation that several evaluators may have potential conflicts of interest because of personal or professional relationships with awardee's employees is not sufficient to justify overturning the award, since the record contains no evidence of bias or preferential treatment toward awardee in the evaluation process.

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6. Where protest is denied in part and dismissed in part, General Accounting Office will deny claim for proposal preparation expenses and costs of pursuing protest.

DECISION

Bell Technical Operations Corporation protests the award of a cost-plus-award-fee contract to Lockheed Engineering and Management Services Company, Inc., by the Department of the Army pursuant to request for proposals (RFP) No. DAAD07-86-R-0054, issued by the Army's White Sands Missile Range to acquire support services at the High Energy Laser Test Facility. In a series of protest letters, Bell has alleged a number of deficiencies in the procurement. We find that some of these allegations are untimely under our Bid Protest Regulations, 4 C.F.R. part 21 (1986), and we find that the others are without merit. Accordingly, the protest is dismissed in part and denied in part.

PROTEST ISSUES

In its initial protest letter (filed on March 13, 1987), Bell charged that the award to Lockheed was contrary to the RFP's direction that award would be made on the basis of the proposal that represented the "best buy" to the government, because Lockheed's proposed cost was substantially higher than the cost estimate proposed by Bell. In a subsequent protest letter (filed on April 10), Bell alleged that the Army's evaluation of Bell's proposal was deficient in a number of areas in which Bell received low technical and management scores; Bell also alleged that Lockheed's initial proposal should have been rejected by the contracting officer because it was submitted after the time set in the RFP for submission of initial proposals. Finally, in its comments (filed on May 7) on the agency's reports on its first two protest letters, Bell charged that members of the Proposal Evaluation Board may have had conflicts of interest because of personal and professional relationships with Lockheed employees. Bell requests that our Office set aside the award to Lockheed as invalid and recommend that the Army award the contract to Bell as the lowest priced, technically acceptable offeror. Bell also requests reimbursement of its proposal preparation expenses as well as attorney's fees associated with pursuing this protest.

Timeliness

As previously indicated, Bell's initial protest letter, filed in our Office on March 13, raised only the issue of whether the Army properly selected Lockheed for award even though Lockheed's proposed price was substantially higher

than the protester's proposed price. Bell states that it was notified by telephone on March 6 that the award had been made to Lockheed on that date. Accordingly, since Bell protested to our Office within 10 working days after it was notified that the contract had been awarded to Lockheed, the initial protest issue is timely and will be resolved on its merits. 4 C.F.R. § 21.2(a)(2).

While we were awaiting the Army's report on Bell's initial protest, by letter of April 9 (filed in our Office on April 10) Bell raised nine new protest issues. Eight of the new allegations related to the Army's evaluation of Bell's technical/management proposals. Basically, in each of the eight areas, Bell alleged that the Army evaluators improperly rated Bell's proposal too low. Alternatively, Bell contended that the Army should have pointed out these perceived deficiencies to it during discussions.

The issues raised by Bell regarding the alleged improper downgrading of its proposal in several areas represent new grounds of protest which are distinct from the issue raised in Bell's initial protest letter. New grounds of protest such as these must independently satisfy the timeliness requirements of our Bid Protest Regulations, and thus must be filed not later than 10 working days after the bases for them is known or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2); Q. Earl Yancey, CPA, B-223931, Nov. 18, 1986, 86-2 C.P.D. ¶ 577.

The record shows that discussions were held with Bell regarding its initial proposal between December 17 and December 19, 1986. Best and final offers (BAFO's) were submitted by January 14, 1987, and the contract was awarded to Lockheed on March 6. The Army notified Bell of the award by telephone and by letter of March 6. The March 6 letter, which Bell received on March 12, specifically listed all eight areas in which Bell's technical/management proposal received low evaluation scores. A debriefing was conducted with Bell on March 13, at which time the Army very specifically explained to Bell exactly why its proposal was downgraded in these areas. Accordingly, Bell certainly should have known these bases for protest at the latest by the March 13 debriefing conference. Since Bell waited 20 working days after it knew these bases for protest to file its protest of them with our Office, these issues are dismissed as untimely and will not be considered on their merits.

Release Of Awardee's
Proposal And Evaluation Memorandum

Bell requests that our Office give it a copy of the Lockheed proposal and of a memorandum prepared by the contracting officer concerning the evaluation of proposals so that Bell can comment upon their contents in rebutting the Army's reports. The Army refused to give these materials to the protester because the Army considers them to contain either proprietary information or internal agency "deliberative" materials, which are exempt from disclosure under the Freedom of Information Act.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. III 1985), government agencies are not required to provide to protesters and other interested parties documents related to a protested procurement action that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, consistent with our practice, we have reviewed and based our decision on the entire record, not merely those portions that have been provided to the protester. Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 C.P.D. ¶ ____.

Award Selection

Bell argues that it should have been awarded the contract because its proposal was the lowest priced, technically acceptable proposal received by the Army. Bell contends that its proposed price was \$5,795,122 less than Lockheed's proposed price and therefore represented the "best buy" to the government.

In a negotiated procurement, unless the solicitation so specifies, there is no requirement that award be made on the basis of lowest price. Sage Diagnostics, B-222427, July 21, 1986, 86-2 C.P.D. ¶ 85. Rather, the contracting agency has discretion to select a higher priced, higher rated technical proposal, if doing so is deemed to be worth the extra cost to the government. Id. When a contracting agency makes a price/technical tradeoff, the award need only be rationally based and consistent with the RFP's evaluation scheme. Technology, Inc., B-223999, Nov. 4, 1986, 86-2 C.P.D. ¶ 517. Our Office will not question the contracting official's judgment regarding the significance of the difference in technical merit unless that judgment is clearly shown to be unreasonable. Id.

In the present case, the RFP stated:

"Contract award will be made to that offeror whose technical proposal rating and whose evaluated cost proposal is determined to represent the 'best buy' to the Government. This procurement is competed for quality of service and reasonableness of cost, not minimum service at minimum cost."

The RFP also set forth the evaluation factors and the relative weight to be given to each in the evaluation of proposals as follows:

(1) Engineering and Technical Support Services	38%
(2) Management	32%
(3) Quality Assurance	10%
(4) Safety	10%
(5) Cost	10%

The record shows that the Proposal Evaluation Board evaluated each offeror's BAFO in each of the four above-stated, non-cost evaluation areas. In each and every non-cost evaluation area, the Lockheed proposal received a significantly higher score than did the Bell proposal. The BAFO's were also evaluated in the "cost" area by a Contract Cost/Price Analyst who made adjustments to proposed costs as part of a cost realism assessment. Next, the Proposal Evaluation Board, at the request of the Contract Cost/Price Analyst, evaluated each BAFO with regard to cost realism. After consideration of all of the evaluation factors, the Proposal Evaluation Board unanimously recommended award to Lockheed as the "best buy" to the government in spite of Lockheed's higher proposed price. The contracting officer examined the Proposal Evaluation Board's recommendation and analysis of the strengths and weaknesses of each offer and determined that it would be worth the expenditure of approximately \$6.1 million over the 5-year length of this contract, worth approximately \$80 million, to obtain the higher evaluated technical and management competence of Lockheed over Bell. Accordingly, he determined that Lockheed's proposal represented the "best buy" and would be in the best interests of the government.

Since Bell has presented no evidence to show that the contracting officer's selection of Lockheed was unreasonable, and because the RFP specifically indicated that cost would be weighted only one ninth as heavily as the other evaluation factors combined, we have no basis to object to the Army's award decision. Accordingly, Bell's protest is denied on this point.

Late Proposal

The protester charges that Lockheed's initial proposal was submitted after the July 25, 1986, closing date for submission of initial proposals. The protester provides no evidence to support this claim, but requests that our Office "look into" the matter to determine if it is true. The contracting officer rebuts the allegation by simply stating that all parts of Lockheed's proposal were received by the closing time.

The protester must submit sufficient evidence to prove its case, and this burden of proof is not met where the only evidence is a self-serving statement by the protester that conflicts with the agency's version of the facts. Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 C.P.D. ¶ 384. Here, since Bell has submitted no evidence to support its assertion and has not even explained why it believes Lockheed's proposal was late or how Bell came to suspect that Lockheed submitted a late proposal, the burden of proof clearly has not been carried. Accordingly, the protest is denied on this issue.

Conflicts Of Interest Among Evaluators

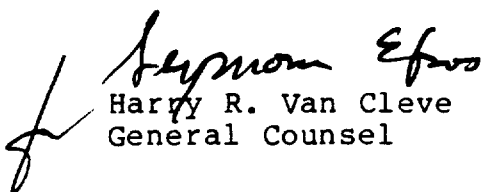
In its response to the Army's reports on the above protest allegations, the protester has alleged yet another impropriety in this procurement. The protester claims that several members of the Proposal Evaluation Board have potential conflicts of interest because of personal or professional relationships with people employed by Lockheed. The protester, however, has made no showing of possible bias or preferential treatment on the part of the evaluators in favor of Lockheed. See Rosser, White, Hobbs, Davidson, McClellan, Kelley, Inc., B-224199, Dec. 24, 1986, 66 Comp. Gen. ___, 86-2 C.P.D. ¶ 714. In fact, we note that several of the alleged relationships appear, simply, to be the types of acquaintanceships that could properly arise whenever a commercial firm has done work for a particular government agency in the past. In any event, because the record contains no evidence of bias or preferential treatment toward Lockheed by the evaluators, and because the protester's mere suspicion and innuendo regarding potential conflicts of interest do not justify overturning the award to Lockheed, the protest is denied on this issue. Id.

PROPOSAL PREPARATION/BID PROTEST COSTS

Finally, the protester requests that it be reimbursed the expenses incurred in preparing its proposal as well as the costs of pursuing this protest. However, since we deny the protest in part and dismiss it in part, we deny the claim

for costs. See COMSAT International Communications, Inc.,
B-223953, Nov. 7, 1986, 86-2 C.P.D. ¶ 532 at 6.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel